

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

HOWARD DELACRUZ-BANCROFT,

Plaintiff,

v.

Case No. 1:23-CV-23 JB-KK

FIELD NATION, LLC, *et al.*,

Defendants.

RESPONSE IN OPPOSITION TO PLAINTIFF’S REQUEST FOR ADDITIONAL TIME

Defendant NewBold Corporation, on behalf of its division National Service Center (“NSC”), hereby responds in opposition to Plaintiff’s request for additional time to respond to NSC’s Motion to Dismiss, as made in Doc. 33 (the “**Request**”), and as grounds states:

1. Plaintiff’s Request itself is untimely because it was filed on February 5, 2024, contrary to the Court’s *Order to Show Cause* (Doc. 32) (the “**Order**”), which directed that the Request be filed by February 2, 2024.
2. The Order resulted from Plaintiff’s failure to timely respond to, among other things, NSC’s Motion to Dismiss (the “**Motion**”) in the first instance.
3. Plaintiff’s Request maintains that he “did not realize that actions should and/or could have been taken” by Plaintiff. (Doc. 33 at ¶ 10).
4. However, in consideration of Plaintiff’s *pro se* status, NSC, through counsel, communicated with Plaintiff regarding a response to the Motion, and NSC’s intention to file its Notice of Completion of Briefing if a response was not filed in this Court. *See* attached Exhibit A.

5. Plaintiff acknowledged receipt of the communication and nonetheless declined to file a response to the Motion.

6. Plaintiff has, to-date, failed to file a response to the Motion.

7. Contrary to Plaintiff's assertion, granting Plaintiff's Request would cause prejudice to NSC because it adds to NSC's costs and obligations to, at a minimum, monitor an open lawsuit that Plaintiff is not properly pursuing under the federal rules of civil procedure.

8. Contrary to Plaintiff's assertion, granting Plaintiff's Request would cause prejudice to NSC because NSC would be required to expend additional resources to actively litigate a lawsuit in a manner contrary to the scope and purpose of the federal rules of civil procedure.

9. The federal rules of civil procedure "should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding." Fed.R.Civ.P.1.

10. Plaintiff does not dispute his failure to comply with the federal rules of civil procedure.

11. Plaintiff's Request is a continuation of his failure to comply with the federal rules of civil procedure, this Court's Order, and other applicable law.

12. Although *pro se* litigants are given some leeway, Plaintiff's *pro se* status does not except him from the consequences of noncompliance with the federal rules of civil procedure. *Nielsen v. Price*, 17 F.3d 1276, 1277 (10th Cir. 1994).

Respectfully Submitted,

SUTIN, THAYER & BROWNE
A Professional Corporation

By /s/ Alex G. Elborn

Alex G. Elborn

Andrew J. Simons

Post Office Box 1945

Albuquerque, NM 87103-1945

(505) 883-2500

age@sutinfirm.com

ajs@sutinfirm.com

*Attorneys for Defendants NewBold
Corporation On behalf of its division
National Service Center*

I hereby certify that a true and correct
copy of the foregoing Response was filed
with the Court electronically
using the CM/ECF System, which caused
all counsel of record to be served, and was served
via first class mail and email, on
February 7, 2024 to:

Howard DeLaCruz-Bancroft

P.O. Box 11985

Albuquerque, NM 87192

comvetrix@gmail.com

Plaintiff Pro Se

And via email to:

GORDON REES SCULLY MANSUKHANI, LLP

Christopher R. Jones

Jaime L. Wiesenfeld

cjones@grsm.com

jwiesenfeld@grsm.com

Attorneys for Jack in the Box Inc.

LITTLER MENDELSON, P.C.

Jay J. Athey

JAthey@littler.com

*Attorneys for Defendant Field
Nation, LLC*

By: /s/ Andrew J. Simons



6100 Uptown Blvd. NE, Suite 400
Albuquerque, NM 87110
P.O. Box 1945
Albuquerque, NM 87103
Phone: (505) 883-2500
Fax: (505) 888-6565
sutinfirm.com

April 7, 2023

VIA EMAIL AND US MAIL

Howard DeLaCruz-Bancroft
P.O. Box 11985
Albuquerque, NM 87192
comvetrix@gmail.com

Outstanding Response;
DeLaCruz-Bancroft v. Field Nation, LLC et al.

Mr. DeLaCruz-Bancroft:

I represent NewBold Corporation, on behalf of its division National Service Center ("NewBold"), in this matter. Please forward this communication to your attorney if you are now represented by counsel.

I write as a courtesy to ask whether you intend to file with the Federal Court any response to NewBold's Motion to Dismiss, which was originally filed in the State Court on December 14, 2022. As indicated in its January 26, 2023 Order Finding Good Cause to Delay and Setting Consent Deadline, the Federal Court has delayed the entry of a scheduling order in this matter pending the resolution of, in part, NewBold's Motion to Dismiss. The deadline to respond to NewBold's Motion in Federal Court has long passed.

NewBold will file a Notice of Completion of Briefing regarding its Motion to Dismiss if you do not promptly file a response thereto.

Respectfully,

/s/ Alex G. Elborn

Alex G. Elborn
Albuquerque Office

Cc:
Littler Mendelson, P.C.
Gordon Rees Scully Mansukhani, LLP

AGE:sxm
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Exhibit A